

1 course, it's subject to check if it's not correct. Does it
2 sound correct to you that Raystay owned WEEO from 1971 to 1980
3 and then again from 1983 to 1984?

4 A That sounds about right, yes.

5 Q Now you were actively involved in the operation and
6 management of that station, were you not?

7 A Yes, I was.

8 Q In fact, you functioned as the general manager?

9 A I didn't function as the general manager, no. I, I
10 had a general manager both times that we owned it. But I
11 worked very closely with the general manager.

12 Q Now Raystay also owned an AM station in Toledo, Ohio
13 from 1973 to 1976, correct?

14 A Yes.

15 Q And that was WTTO?

16 A Yes.

17 Q And likewise were you actively involved in the, in
18 the management and operation of that station?

19 A I, I had a general manager there. In fact, I had
20 three general managers during the time that we owned it. And
21 I did work very closely with those general managers, yes.

22 Q And finally, you had an ownership interest, did you
23 not, between '78 and '82 in WQBE, an FM station?

24 A Yes.

25 Q And where was that licensed to?

1 A It was licensed to Mechanicsburg, Pennsylvania.

2 Q And you were also an officer and director of that
3 licensee? That, that was West Shore Broadcasting Company?

4 A Yes, I was an officer. Yes, I was a director. And
5 it was West Shore Broadcasting Company.

6 Q Okay. Thank you. And you likewise were actively
7 involved in the management and operation of that station?

8 A Yes, I was. I had a general manager on a daily
9 basis that I worked very closely with. In fact, I had two
10 general managers there. Worked very closely with both of
11 them.

12 Q Now how many years roughly in your career would you
13 say you've been filing applications with the FCC?

14 A Since 1968.

15 Q So that's about 25 years ago?

16 A Yes.

17 Q And in that time, do you have any rough estimate as
18 to how many applications you filed with the FCC over that
19 period?

20 A I wouldn't have any idea.

21 Q Would it be safe to say it was quite a few?

22 A Well, not only are there applications for the radio
23 stations. But there's -- and the LPTV stations. But there's
24 applications for two-way radio and for studio links for
25 microwaves. And we have some licenses for earth stations.

1 Quite a few different types of licenses, yes.

2 Q So you've been involved over the years in filing a
3 variety of kinds of licenses and other kinds of applications
4 with the FCC?

5 A That's correct.

6 Q And you have filed also, have you not, some
7 applications for stations that were mutually exclusive with
8 renewal applicants for licenses?

9 A That's correct.

10 MR. SCHAUBLE: Objection, relevance at this point,
11 Your Honor.

12 JUDGE CHACHKIN: Where are we going with all this?

13 MR. EMMONS: I just want to establish the
14 licensee's -- I mean, sorry, the witness's background
15 familiarity generally with FCC process.

16 MR. SCHAUBLE: Your Honor, Your Honor, I have no --

17 MR. EMMONS: That's the end of that line of inquiry.

18 MR. SCHAUBLE: Your Honor, I had no objection with
19 general background concerning the witness's ownership
20 background. But at this point I don't see --

21 JUDGE CHACHKIN: Well, he has no more questions.
22 It's too late now. The last answer the witness -- I'll allow
23 the last answer of the witness which was --

24 MR. COHEN: Could we hear that question back and the
25 answer --

1 JUDGE CHACHKIN: What was the last -- we can save
2 time. You asked the witness --

3 MR. EMMONS: The, the last question was to the
4 effect you also filed applications on some cases for
5 construction permits that were mutually exclusive with license
6 renewal applications. And the answer was yes.

7 JUDGE CHACHKIN: I'll permit that answer. Go ahead.

8 BY MR. EMMONS:

9 Q Now Mr. Gardner, we've been using the term TV40 in
10 this proceeding. I think you'll understand what that means.
11 It refers to the Raystay's low-power television station
12 license to Dillsburg, Pennsylvania.

13 A W40A.

14 Q That's the call sign.

15 A Yes.

16 Q And will you accept the term TV40 if we can use that
17 term as we discuss --

18 A Certainly.

19 Q It is correct, is it not, that TV40 became
20 operational in about the latter part of 1988?

21 A December the 16th.

22 Q Of 1988.

23 A Yes.

24 Q And then shortly thereafter, specifically in March
25 1989, Raystay filed applications with the FCC for five

1 additional low-power television construction permits?

2 A Yes.

3 Q And was that your idea to do that?

4 A Yes, it was my idea.

5 Q And your business concept at the time for filing
6 those additional, for those additional construction permits
7 was to form a regional group of stations with common
8 programming to reach the Harrisburg-York-Lancaster market?

9 A That's correct.

10 Q Would you turn -- you have before you several blue
11 volumes. And I'd ask you to turn to volume 3B of the blue
12 volumes and just generally take a look at Exhibit 204 through
13 207. These are noted by white tabs.

14 MR. SCHAUBLE: Excuse me. Do you mean 204 or 203 --

15 MR. EMMONS: Oh, I'm sorry. Thank you, counsel.
16 203 to 207. And I will tell you so that you don't need to
17 spend a lot of time checking them unless you want to that
18 these are the five applications filed by Raystay for low-power
19 construction permits in March of 1989. And my question is
20 just generally do you recognize these as being those
21 applications?

22 MR. GARDNER: Yes, I've seen them in the exhibits
23 here.

24 MR. EMMONS: Okay. Now while these applications
25 were pending at the FCC, the FCC issued a decision regarding a

1 settlement of the Fort Lauderdale license application
2 proceeding in which you were involved, did it not?

3 MR. SCHAUBLE: Objection, relevance, Your Honor.

4 JUDGE CHACHKIN: What's the relevance?

5 MR. EMMONS: Well, Your Honor, the -- we've been
6 through this at the admissions session. The -- there were
7 some amendments filed to the, to the applications that are
8 these exhibits. The amendments were filed pursuant to the
9 decision of the Commission in the Fort Lauderdale proceeding.
10 And I'm simply establishing the chain of events of the filing
11 of the application and the filing of the amendments.

12 JUDGE CHACHKIN: Well, the amendments are in the
13 record. We don't have to go into that.

14 MR. EMMONS: All right.

15 BY MR. EMMONS:

16 Q Mr. Gardner, the -- I'm correct, am I not, that the
17 Commission granted construction permits for the five low-power
18 stations applied for in March 1989.

19 A Yes.

20 Q And, and those were granted in July 1990?

21 A I believe they were, yes.

22 Q And you were aware of those grants at the time they
23 occurred, were you not?

24 A Yes, I was.

25 Q And you were aware, were you not, that the permits

1 were good for a period of 18 months and had an expiration date
2 on them 18 months later?

3 A Yes.

4 Q Now -- and did you, did you -- would you turn to TBF
5 Exhibit 260 which is in volume 3B.

6 (Pause.)

7 A I have it.

8 Q And do you recognize -- this is a letter dated
9 July 23, 1990 addressed to you signed by Roy Stewart
10 (phonetic sp.), Chief of the Mass Media Bureau. Do you
11 recognize this as a letter that accompanied the grant of the
12 construction permits in question?

13 A Well, I, I recognize that it is about that same
14 time, yes.

15 Q Well, if you -- did you --

16 A And it lists the construction permits, yes.

17 Q Then I assume you read this letter when it, when it
18 was issued.

19 A I certainly -- I don't recall reading it. It's
20 something I probably would have. But I've certainly read it
21 since that time.

22 Q Now when the construction permits were issued in
23 July 1990, am I correct that you assigned Hal Etsell to
24 develop a business plan for the implementation of, of the
25 permits?

1 A Yes.

2 Q Now at that point, TV40 was, was losing money, was
3 it not?

4 A Yes, it was.

5 Q And, and TV40 had very limited cable carriage at
6 that point.

7 A It had cable carriage on the Carlisle system.

8 Q When you say the Carlisle system you, you referring
9 to the cable system owned by Raystay that's near Carlisle?

10 A That's correct, yes.

11 Q And that, that was the only cable carriage that TV40
12 had?

13 A When I asked Harold Etsell to take the project on,
14 it may have had a couple of smaller systems carrying it also.
15 I don't remember when they started to carry it. But it was
16 mainly just the Carlisle system.

17 Q Well, is it fair to say that at that time, and I'm
18 referring to the summer of 1990 when, when the additional
19 permits were granted to you that, that at that time you felt
20 that you needed to expand the cable carriage of, of Raystay's
21 low-power business in order to make that business successful?

22 A Yes.

23 Q Now did Mr. Etsell proceed to develop a concept for
24 implementation of the new stations?

25 A Yes, he did.

1 Q All right. And that concept was to, to have TV40
2 and the five additional stations programmed similarly, was it
3 not?

4 A It was based on my original regional television
5 station concept, yes.

6 Q Okay. And, and that concept called for the, for the
7 stations to have primarily the same programming but with the
8 ability of each station to have local inserts to cover local
9 events of interest?

10 A That's correct.

11 Q And, and the concept included offering that package
12 of programming to the various cable operators in the locality
13 as a means of interesting those cable operators in carrying
14 your stations.

15 A That's correct.

16 Q And the thought was that what might attract the
17 interest of the cable operators was the ability to insert
18 programming of local interest during parts of the day on their
19 local stations.

20 A Plus their ability to reduce their cost of
21 programming.

22 Q Okay. In other words, the concept was that Raystay
23 might be able to provide programming more cheaply to the cable
24 systems than the cable systems were then able to acquire?

25 A That's correct.

1 Q All right. And, and the concept also included the
2 thought that this network of low-power stations would be
3 interconnected by microwave?

4 A We had hoped to use a direct off-the-air pickup from
5 TV40 to continue on to the other stations. As a backup plan
6 if that wasn't going to be feasible, we would have used
7 microwave. Microwave was an alternative. We were trying to
8 keep the costs as low as possible.

9 Q All right. And, and off-the-air pickup would have
10 been cheaper than microwave connections?

11 A Yes, it would have. The, the difficulty with off-
12 the-air pickup as we discovered was that when the station cut
13 away to its own programming the other stations beyond them in
14 the network had to cut away at the same time. So it became
15 difficult to make the concept work.

16 Q Now there came a time, did there not, that Mr.
17 Etsell wrote up in written form a business plan.

18 A Yes.

19 Q Would you turn to TBF Exhibit 210 please which is in
20 volume 3C.

21 A Yes, I have it.

22 (Asides.)

23 Q This is a two-page document dated February 12th,
24 1991. The question is do you recognize this document as being
25 the, the business plan drafted by Mr. Etsell?

1 A This was apparently one of the early versions of it.

2 Q Are you aware of any later version of a written
3 business plan?

4 A I, I haven't seen a later version, no.

5 Q Now you see that there are some handwritten
6 notations on, on both pages of the, of the document.

7 A Yes.

8 Q Are any of those handwritten notations yours?

9 A There are a couple comments about spelling or
10 whatever in the second paragraph. They're mine. I have no
11 idea what or who may have put draft on at the top. And all of
12 the written comments on the second page are mine.

13 MR. EMMONS: And Your Honor, I just want to say for
14 the record I think yesterday or earlier in the hearing I, I
15 stated in response to some question that the word draft on
16 this document had been placed there by Mr. Gardner. And, and
17 that -- I had mis-recollected the case, as he has just
18 testified apparently that was not placed there by him. And in
19 fact, I think Mr. Etsell's testimony indicates that Mr. Etsell
20 put it on there. I just wanted to correct that.

21 BY MR. EMMONS:

22 Q Now Mr. Gardner, would you look at page 1 of the
23 document and in particular to the second paragraph. And in
24 the middle of that paragraph there is the following sentence,
25 "To become a viable outlet for area advertisers, it is

1 necessary to have access to the major cable system operators
2 in the area." And my question is you agreed with that, with
3 that thought expressed there by Mr. Etsell, did you not?

4 A Yes, I do.

5 Q And is it accurate to say then that the business
6 plan developed here by Mr. Etsell was premised on cable
7 carriage of, of these low-power stations.

8 A Yes, it was.

9 Q And you felt, did you not, that Raystay could not
10 viably operate five more stations, five more low-power
11 television stations, without cable carriage?

12 A That's correct.

13 Q And that was based on your experience with TV40?

14 A We applied for the five additional LPTV construction
15 permits before we were able to determine what the acceptance
16 of the TV40 situation was with the area advertisers. And by
17 the time the construction permits were granted, it was obvious
18 to us that without cable carriage it would be very difficult
19 to make them viable.

20 Q And your experience with TV40 in fact had convinced
21 you that you couldn't break even with low power unless you had
22 good cable carriage.

23 A Not only that, we had to have large metropolitan
24 type cable systems. The Carlisle system was a much smaller
25 system. And we needed access to the larger cable systems to

1 get enough viewers for the programming so that the advertisers
2 would be interested.

3 Q And, and large metropolitan areas refers to what in,
4 in --

5 A Well, the, the metropolitan area of Harrisburg,
6 York, Lebanon and Lancaster. It's a much larger area.
7 Carlisle is pretty much on the fringe of the area. And it has
8 cable systems with which, with many more subscribers than what
9 the Carlisle system had.

10 Q Let me ask you first, this document, TBF Exhibit
11 210, I take it is a, is a fair description of, of the business
12 plan that Mr. Etsell developed.

13 A Yes. It was the basic business plan.

14 Q Now it became apparent, did it not, that at some
15 point that this plan was meeting resistance from the cable
16 operators.

17 A I wouldn't characterize it as meeting resistance. I
18 believe the cable operators generally supported it. The
19 problem was in the requirements of each cable system. They
20 liked the concept, but each of the cable operations had a
21 different set of requirements. And in an effort to develop
22 programming that was acceptable to each of their different
23 requirements, we had great difficulty.

24 Q So you did not succeed then in, in developing a
25 program concept that would have satisfied the objections or

1 the concerns expressed to you by the cable operators.

2 A No.

3 Q And when you saw that, that you were getting these
4 concerns stated to you from the cable operators that you
5 couldn't meet, at that point you began to look for other
6 alternative ways of dealing with these construction permits,
7 did you not?

8 A We were working on the effort to combine all of the
9 requirements of the cable operators into common programming
10 when we had the opportunity to enter into a type of joint
11 venture with another group. And the work on this business
12 plan stopped at that time.

13 The work with the other group lasted several months.
14 And when the work with that group terminated, we went back to
15 this business plan. I worked myself on it. I had other
16 people that did work on it. And we worked on this plan as
17 well as trying to define other ways that we could make the
18 construction permits viable.

19 Q Well, let's go back to when you first suspended or
20 whatever term you used, something to that effect --

21 A Yes.

22 Q -- working on this plan. You, you did that because,
23 because you found that, that your concept was meeting some
24 resistance from the cable operators. Isn't that correct?

25 A The reason we suspended the development of the plan

1 | was because the other opportunity was presented to us. And it
2 | was a viable situation. We were to obtain revenue. TV40 was
3 | involved. The construction permits were going to be involved
4 | in it. We were going to build the stations. And it made a
5 | lot more sense than to continue with this business plan.

6 | Q Well, which came first, your determination that the
7 | cable operators weren't going to carry your programming or the
8 | opportunity to make some other kind of deal? Which, which
9 | came first?

10 | A Well, we were working with the cable operators. And
11 | in fact, we worked with the cable operators for some time.
12 | But in the meantime, we had the opportunity to actually enter
13 | into an agreement with another company who took over a lot of
14 | our responsibilities in writing. We were going to find a way
15 | to actually build the construction permits and to operate
16 | them. And they were going to lease the facilities. The
17 | programming was under our control. It was one of those types
18 | of agreements that you're offered now and then that you have
19 | to say pinch me, I have difficulty believing it's true. And I
20 | guess that was the problem with it. It didn't last. It was
21 | too good to be true.

22 | Q Well, would you turn -- do you have a yellow volume
23 | in front of you which is your deposition, a copy of your
24 | deposition?

25 | MR. SCHAUBLE: I think it's at the bottom of that

1 pile.

2 MR. GARDNER: Yes, here it is.

3 MR. EMMONS: Would you turn to page 78 of that
4 please? Let's see, that's down at line 20 toward the bottom
5 of the page, did you give the following testimony? "When we
6 saw that this plan was meeting with resistance with the cable
7 operators, then I tried to find out if there any other way
8 that we could break even or make a profit with the stations.
9 We had a proposal from, I see it right here, Alternatives
10 Virginia was the name of it." Did you give that testimony?

11 MR. SCHAUBLE: Your Honor, I object. I don't think
12 there's anything inconsistent --

13 JUDGE CHACHKIN: What's inconsistent about his
14 testimony?

15 MR. EMMONS: Well, what's inconsistent, Your Honor,
16 is that the, the witness in his testimony today is indicating
17 that there was not a connection between the determination that
18 the business plan was meeting resistance from the cable
19 operators and a decision then to go ahead and look for other
20 alternatives. His deposition testimony makes clear the
21 sequence of those events and those determinations.

22 MR. SCHAUBLE: Your Honor, I don't think that's an
23 accurate characterization. The previous question that counsel
24 had asked was first of all, he didn't talk about resistance
25 from cable operators. I believe the question was did he

1 make -- he talked about something different. First, was there
2 a determination that cable operators wouldn't carry stations
3 which is something different. And as I read the -- I don't
4 see anything inconsistent here.

5 MR. EMMONS: Well, Your Honor, I, I certainly see an
6 inconsistency. And it seems to me that, that counsel for
7 Glendale can argue and find that there's none, no
8 inconsistency. And I will, I'll be glad to argue that there
9 is an inconsistency. But we need to have it in the record in
10 order to be able to, to discuss that point.

11 MR. SCHAUBLE: Your Honor, I don't see any, I don't
12 see any basis here for --

13 MR. EMMONS: Well, if there's no basis in there, it
14 doesn't hurt --

15 MR. SCHAUBLE: Well --

16 JUDGE CHACHKIN: All right. You can continue -- as
17 Mr. Emmons points out, if there's no basis for it, I'd have to
18 listen to the questions and answers. And rather than take the
19 time, it's in the record. If there's no basis for it, then it
20 won't be considered.

21 MR. SCHAUBLE: Thank you, Your Honor.

22 BY MR. EMMONS:

23 Q Now Mr. Gardner, the, the Alternatives Virginia
24 proposal, that's what you've been testifying about this
25 afternoon, is it not, that the --

1 A That's correct.

2 Q Okay. And that was Mr. Fenstermacher.

3 A Yes.

4 Q And, and that's -- Mr. Fenstermacher also went by
5 the business name Equality Family Companies?

6 A Yes.

7 Q Okay. And you began to explore a deal with Mr.
8 Fenstermacher in January 1991?

9 A Yes. I believe it was in, in January.

10 Q And, and that resulted, did it not, in your signing
11 agreements with Mr. Fenstermacher in May of 1991?

12 A Yes.

13 Q And the reason you decided to make that deal with
14 Mr. Fenstermacher was in part because TV40 was losing money?

15 A Yes.

16 Q And, and also the reason for exploring that with Mr.
17 Fenstermacher was that your business plan had started to come
18 apart at the seams?

19 A The plan with Alternatives Virginia encompassed --
20 the construction permits for the LPTV station. It looked like
21 a much better plan to start working on than to continue with
22 the business plan that Mr. Etsell was working with. TV40 as
23 you point out was losing money. And we weren't able to find a
24 way to satisfy the requirements of the cable operators. So
25 the Alternatives Virginia plan started to look much better to

1 me.

2 Q Well, in fact, is it not true that it was only after
3 your business plan started to come apart at the seams that you
4 decided to explore other avenues including Mr. Fenstermacher.

5 A Well --

6 MR. SCHAUBLE: Objection to the question, Your
7 Honor. Coming apart -- I don't understand the question.

8 JUDGE CHACHKIN: Overruled.

9 MR. GARDNER: Mr. Fenstermacher had approached me
10 early on. And we wanted to see if we couldn't work out the
11 original business plan. And it was only after we found
12 resistance there and were having difficulty with it that we
13 decided to try Mr. Fenstermacher's plan. I was interested in
14 any business plan that made sense. And at that point, Mr.
15 Fenstermacher's made more sense than to continue with the one
16 that we were working on.

17 BY MR. EMMONS:

18 Q Well, at the time you began working with Mr.
19 Fenstermacher, in your view your own business plan had started
20 to come apart at the seams.

21 A We could not find a way to make it work. That's
22 correct.

23 Q Now the deal with Mr. Fenstermacher eventually
24 collapsed, did it not, in August of 1991?

25 A That's correct.

1 Q And when that happened, you instructed people in
2 your company to talk to anyone who expressed an interest in
3 TV40 and the construction permits, did you not?

4 A We needed to find some business plan that worked not
5 only for TV40 but for the LPTV construction permits.

6 Q Well, you, you told your people to talk with anyone
7 who expressed an interest in, in TV40 and the permits
8 including an interest in purchasing them, didn't you?

9 A If TV40 was included in it, then yes, I saw no
10 problem with having the CPs go along with it. We needed to
11 find a resolution for the entire LPTV operation we were
12 engaged in.

13 Q And that resolution or, might include in your view
14 at that time selling TV40 and the permits.

15 A Yes.

16 Q Now again focusing on the time frame of about August
17 1991, in fact there were at that time at least three parties,
18 were there not, who were, who expressed interest in acquiring
19 TV40 and/or some or all the construction permits?

20 A Yes.

21 Q And those three were, were Trinity Broadcasting and
22 Dennis Grolman and Robert Shaffner.

23 A That's correct.

24 Q Now with respect to Trinity, you knew that David
25 Gardner had started negotiating with Trinity, didn't you?

1 A I had some knowledge of it. I don't believe I
2 stayed completely knowledgeable on what he was doing, no.

3 Q But, but you knew that he was negotiating with
4 Trinity.

5 A I knew that there was correspondence with Trinity,
6 yes.

7 Q And, and David Gardner was fully authorized and
8 empowered to, to undertake that activity, was he not?

9 A I had ask Lee Sandifer and David Gardner to respond
10 to any request that made sense as far as our LPTV operations
11 were concerned and see if there was any way that we could
12 develop something that would work for him.

13 Q So I'm correct then that David Gardner was fully
14 authorized and empowered by you to conduct these negotiations
15 with Trinity.

16 A Yes.

17 Q Now if you turn to TBF Exhibit 230 please, in volume
18 3C.

19 (Pause.)

20 A I have it.

21 Q Okay. Now this is a letter dated October 31 --
22 excuse me, October 30, 1991 from David Gardner to George
23 Sebastian at Trinity Broadcasting. And my question to you,
24 Mr. Gardner, is do you recognize this document as being a
25 formal proposal from Raystay to Trinity with respect to TV40

1 and the various construction permits?

2 A Yes.

3 Q Did David Gardner or Lee Sandifer discuss with you
4 the terms that now appear in this letter prior to the letter
5 being sent?

6 A I have no idea who would have discussed it with me.
7 But the second and fourth paragraph contain information that I
8 feel they would have had my concurrence on before they made
9 the offer.

10 Q So it's, it's your testimony that you approved the
11 terms that are expressed in this letter?

12 A I, I must have, yes.

13 Q And again, then I guess it's implicit from that that
14 David Gardner was fully authorized and empowered to make the
15 proposal that is reflected in this letter.

16 A Yes.

17 Q Now there came a point shortly thereafter that
18 Trinity made a counter offer in response to David Gardner's
19 letter of October 30, 1991. Were you aware of Trinity's
20 counter offer?

21 A I believe I was, because the counter offer was
22 inadequate for the TV40 property. And we were negotiating
23 with Flight Systems or Robert Shaffner. And our negotiations
24 with him were for a larger sum.

25 Q Okay. And what was the sum that you were

1 negotiating with Mr. Shaffner?

2 A I don't recall exactly what it was. But it was in
3 the \$300,000 range.

4 Q And, and what was the sum that, that Trinity was
5 offering for TV40?

6 A I believe it was \$175,000.

7 Q Now you considered Trinity's offer a valid offer,
8 did you not?

9 MR. SCHAUBLE: Objection.

10 JUDGE CHACHKIN: What do you mean by valid offer?

11 MR. SCHAUBLE: What do you mean by valid?

12 MR. EMMONS: I'm quoting the witness from his
13 deposition, Your Honor. And --

14 JUDGE CHACHKIN: Well, a lot of things can be said
15 at the deposition when there's nobody there to, to object.
16 The question is what do you mean by a valid offer? Valid in
17 the sense that Trinity was making an offer? Was it valid in
18 the sense that it was reasonable in terms of the price that
19 was being asked? Valid in what sense?

20 MR. EMMONS: Well, I'll have to ask the witness what
21 he meant.

22 JUDGE CHACHKIN: All right.

23 BY MR. EMMONS:

24 Q Mr., Mr. Gardner, would you turn to your deposition,
25 page 241.

1 A The deposition.

2 Q That's the yellow, the yellow volume.

3 A Yeah.

4 (Pause.)

5 Q Do you have that before you?

6 A Yes, I do.

7 Q Would you, would you focus at the paragraph starting
8 on line 9 which reads, "The other parties -- Trinity was the
9 only one that ever made us a valid offer. And because of our
10 application against Trinity's broadcast license, Mr. Cohen and
11 I decided that it would be better to withdraw from those
12 negotiations which were just about -- a cash buyer. And we
13 never had anyone else apparently that even came up to their
14 offer or offered us anything." Excuse me. "We sold the one
15 construction permit in Red Lion."

16 Now when you gave that testimony at your deposition,
17 what did you mean by the term valid offer?

18 A Mr. Shaffner had made us one of those offers that
19 you have to say it's a great idea. How are we going to get
20 him to sign his name to it? And I didn't consider his offer
21 valid. The Trinity offer had a name signed to it. I
22 considered it valid. But I still felt that it was far enough
23 under Mr. Shaffner's offer that it would be better for us to
24 work with him.

25 Q Work with Mr. Shaffner.

1 A Yes.

2 Q Now would you turn to TBF Exhibit 238 please.
3 That's in, in volume 3C.

4 A Yes, I have it.

5 Q Now this is a handwritten note dated December 3,
6 1991. Is that your note?

7 A Yes, it is.

8 Q And the note reflects that you had a discussion with
9 Lewis Cohen. What was the substance of that discussion?

10 A Well, since we were going to file an application on
11 a mutually exclusive basis against Trinity and the Miami
12 television station, it just seemed that we should not continue
13 to negotiate with them on this.

14 Q So Mr. Cohen was aware that, that Raystay was
15 negotiating with Trinity for the low-power permits.

16 A I -- yes, he would had to have known it.

17 Q Now the, the last sentence of the note says, "Okay
18 to transfer to anyone else you may wish to work with." What
19 did you mean by that sentence?

20 A Well, see, the sale to Trinity was the sale of TV40.
21 And in the process, they were interested in the construction
22 permits for the other LPTV licenses. And the offer here was
23 if anyone else is interested in TV40 let's go with it.

24 Q Well, is that referring just to TV40, or is it
25 referring to the construction permits as well?